

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

JESSE TRUJILLO,

Petitioner,

v.

Civ. No. 09-59 JH/RLP

GEORGE TAPIA, Warden, *et al.*,

Respondents.

MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION¹

1. This is a proceeding brought pursuant to 28 U.S.C. § 2254. After a jury trial, Petitioner was convicted crimes and an Amended Judgment, Order, and Commitment was entered on October 5, 2004. See Answer [Doc. 10], Exhibit B. thereto. Respondents argue that the § 2254 petition is time-barred pursuant to § 2244(d)(1).

2. After the Amended Judgment was entered on October 5, 2004, Petitioner sought a petition for writ of certiorari in the New Mexico Supreme Court, which was denied on April 14, 2005. Exhibit I. Petitioner then had 90 days for which to seek review by the United States Supreme Court, § 2244(d)(1)(A). Adding 90 days to the April 14, 2005 date, Petitioner's time started running on July 14, 2005 and expired on July 14, 2006. His federal petition was not filed until January 22, 2009.

3. Petitioner did seek collateral review in the state court, but that petition was not filed until October 7, 2008, which was well after the July 14, 2006 deadline.

¹ Within ten (10) days after a party is served with a copy of the Magistrate Judge's Report and Recommendation that party may, pursuant to 28 U.S.C. § 636 (b)(1) , file written objections in the United States District Court to the Report and Recommendation. A party must file any objections within the ten-day period allowed if that party wants to have appellate review of the Report and Recommendation. If no objections are filed, no appellate review will be allowed.

Accordingly, the petition for writ of habeas corpus is time-barred, and I recommend that the case be dismissed with prejudice.

RECOMMENDED DISPOSITION

I recommend that the petition for writ of habeas corpus be denied and this case dismissed with prejudice.

A handwritten signature in black ink, appearing to read 'Richard L. Puglisi', is written over a horizontal line.

Richard L. Puglisi
United States Magistrate Judge